

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT ANNABEL II,
Plaintiff,
v.

NORBERT FRONCZAK,
Defendant.

_____ /

Case No. 23-11123

Robert J. White
United States District Judge

Curtis Ivy, Jr.
United States Magistrate Judge

ORDER ON MOTIONS (ECF Nos. 28, 30, 31)

Plaintiff moved to compel Defendant Fronczak to respond to the complaint (ECF No. 28) and for an order consolidating this case with his other case against Fronczak at Case No. 23-12346 (ECF No. 31). Defendant moved to stay discovery. (ECF No. 30).

Plaintiff's motion to compel Defendant to respond to the complaint is **DENIED AS MOOT**. The undersigned issued a report and recommendation on Defendant's motion to dismiss. After a ruling on that report and recommendation, Defendant will be ordered to answer or otherwise respond to the complaint.

Defendant's motion to stay discovery is **GRANTED**. Defendant states that Plaintiff served interrogatories. He asks that the Court stay discovery until a ruling on his motion to dismiss. (ECF No. 30, PageID.195-97). Typically, discovery does not begin until the parties have engaged in a Federal Rule of Civil Procedure 26(f) conference. The federal rules allow for discovery in prisoner civil rights

litigation, like this case, to begin without a Rule 26(f) conference. In this District, discovery in prisoner civil rights cases commences after the Court issues a case management order after an answer to the complaint is filed. There is no answer yet and Court has not yet entered a case management order. After the answer is filed, the Court will enter a case management order, and discovery can begin. Until that time, Defendant does not have to respond to the discovery requests; responses will be due 30 days after entry of the case management order.

Plaintiff's motion to consolidate cases is **DENIED**. In support of his motion, Plaintiff asserts that this case relates to his other case against Fronczak in that both cases involve the same plaintiff and defendant concerning retaliation claims. He insists that it is in the interest of judicial efficiency to consolidate the cases. (ECF No. 31). Pursuant to Federal Rule of Civil Procedure 42(a)(2), "[i]f actions before the court involve a common question of law or fact, the court may . . . consolidate the actions." *See also* Local Rule 83/11(b)(7). The questions of law and fact in both cases are not the same. In Case No. 23-12346, Plaintiff alleges that Fronczak threatened Plaintiff and another prisoner that he would write misconduct tickets against them if they continued to write grievances against him. This occurred during August 2023. Here, he alleges retaliation occurring during December 2022 relating to complaints about Defendant's behavior and a law library restriction. (ECF No. 7). Though both cases allege retaliation, the facts

and law specific to the retaliation claims are not the same. Because there are no common questions of fact or law, consolidation is inappropriate.

IT IS SO ORDERED.

The parties here may object to and seek review of this Order, but are required to file any objections within 14 days of service as provided for in Federal Rule of Civil Procedure 72(a) and Local Rule 72.1(d). A party may not assign as error any defect in this Order to which timely objection was not made. Fed. R. Civ. P. 72(a). Any objections are required to specify the part of the Order to which the party objects and state the basis of the objection. When an objection is filed to a magistrate judge's ruling on a non-dispositive motion, the ruling remains in effect unless it is stayed by the magistrate judge or a district judge. E.D. Mich. Local Rule 72.2.

Date: October 18, 2024

s/Curtis Ivy, Jr.

Curtis Ivy, Jr.

United States Magistrate Judge

CERTIFICATE OF SERVICE

The undersigned certifies that this document was served on counsel of record and any unrepresented parties via the Court's ECF System or by First Class U.S. mail on October 18, 2024.

s/Sara Krause
Case Manager
(810) 341-7850